

RON'S MOBILE HOMES,)
)
 Employer -Below,)
 Appellant,)
)
 v.) C.A. No. N13A-01-002 WCC
)
 JOSEPH H. BROWN,)
)
)
 Plaintiff-Below,)
 Appellee.)

Upon Appellee's Motion for Attorney's Fees – GRANTED

John J. Klusman, Jr., Esquire and Andrew M. Lukashunas, Esquire. Tybout, Redfearn & Pell, 750 Shipyard Dr., Suite 400, Wilmington, DE 19899. Attorneys for Appellant/Employer.

Joseph W. Weik, Esquire. Weik, Nitsche & Dougherty, 305 North Union Street,
2nd Floor, P.O. Box 2324, Wilmington, DE 19805. Attorney for
Appellee/Claimant.

CARPENTER, J.

Upon consideration of the Appellee's Motion for Attorney's Fees, which Appellant has not challenged, and the record of this case, it appears to the Court that:

1. Appellee has moved for attorney's fees arising out of Appellant's appeal from the Industrial Accident Board's (the "IAB") decision of January 9, 2013. On October 4, 2013, this Court affirmed the IAB's decision finding that, although Appellee was out of work for 18 months prior to being designated "totally disabled" by his doctor, he had evidenced his intent to remain in the workforce through his contact with his prior employer and reliance on assurances of future employment. The Motion also argues for attorney's fees arising out of Appellant's Motion for Reargument which was denied by this Court on November 19, 2013.

2. "The Superior Court may at its discretion allow a reasonable fee to claimant's attorney for services on an appeal from the Board to the Superior Court . . . where the claimant's position in the hearing before the Board is affirmed on appeal."¹ This remedy is to "prevent depleting a claimant's compensation award through attorney's fees incurred where a claimant successfully resists and defends an employer's meritless appeal."² The following factors are to be considered in determining a reasonable amount of attorneys' fees:

¹ 19 Del. C. § 2350 (f).

² *Res. Tech. Servs. v. Hedden*, 1999 WL 41793, at *2 (Del. Super. Jan. 12, 1999).

1) The time and labor required; the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; 3) the fees customarily charged in the locality for similar legal services; 4) the amount involved and the results obtained; 5) the time limitations imposed by the client or by the circumstances; 6) the nature and length of the professional relationship with the client; 7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and 8) whether the fee is fixed or contingent.

Additionally, the Court must consider the employer's ability to pay and whether the attorney will receive any fees and expenses from any other source.³

3. The Motion seeks \$5,950.00 for 17 hours of counsel's time at an hourly rate of \$350. Looking at the above factors, the Court finds that the 17 hours spent defending the appeal and reargument is an appropriate amount of time.⁴ The Motion requests payment for very clearly defined tasks with conservative amounts of time spent on each task. The Court does not find any duplicative billing or excessive time spent in defending the appeal and reargument. Thus, Appellee is entitled to attorney's fees for the full 17 hours as requested.

³ *Bruce v. Chrysler Grp., LLC*, 2012 WL 2353538, at *1-*2 (Del. Super. June 13, 2012) (quoting *Gen. Motors Corp. v. Cox*, 304 A.2d 55, 57 (Del. 1973)).

⁴ *See id.* at *3 (finding 50 hours appropriate); *Zenith Prods. Corp. v. Rodriguez*, 2006 WL 1520192, at *2 (Del. Super. June 5, 2006) (finding 30.5 hours reasonable); *Meadows v. Linton*, 2000 WL 33114379, at *1 (Del. Super. Oct. 10, 2000) (finding 19.2 hours reasonable); *Smith v. Del. Hous. Auth.*, 2006 WL 1148764, at *2 (Del. Super. Feb. 14, 2006) (finding 47.7 hours reasonable with an appeal that presented difficult questions).

4. The Court, however, is concerned with the requested hourly rate of \$350. Previously, this Court has approved hourly rates of up to \$300⁵ and, in spite of counsel's efforts to justify a larger amount, the Court does not believe this case was unique or presented with novel legal issues to justify the higher billing. The Court agrees that Appellee's counsel has vast experience in workers compensation cases and counsel's extensive experience commands a larger fee than those less experienced.⁶ But, there is nothing set forth in the Motion that justifies the \$350 fee that has never been awarded by this Court in administrative appeal cases. The Court simply finds that \$300 is an hourly rate that experienced counsel should find reasonable and the attempt to push the limit higher is not justified.

5. Accordingly, the Court finds that Appellee's request for attorney's fees for 17 hours of labor at a rate of \$300 per hour is reasonable and the Motion for Attorney's Fees is hereby granted in the amount of \$5,100.00.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

⁵ See, e.g., *Roland v. Playtex Prods. Inc.*, 2003 WL 22290059, at *1 (Del. Super. Aug. 26, 2003) (finding \$300 per hour reasonable for an experienced attorney and \$200 per hour reasonable for a less-experienced attorney); *Falconi v. Coombs & Coombs, Inc.*, 2006 WL 3393489, at *3 (finding \$300 reasonable for an experienced attorney who had been a member of the Delaware bar for over 25 years).

⁶ See *Zenith Prods. Corp. v. Rodriguez*, 2006 WL 1520192, at *1 (stating "[o]ne reason that attorneys with extensive experience command larger fees than those less experienced is that, through their knowledge and skill, they are able to more effectively and efficiently serve their clients[]"). As stated in the Motion, counsel has been a member of the bar for 35 years, is the past Chair of the Workers Compensation Section of the Delaware State Bar Association, past President of the Delaware Trial Lawyers Association, and current President of the State of Delaware's ABOTA Chapter. Mot. at (g).